IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 2669 of 2007(P)

PETITIONERS:

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1. P. PADMANABHAN, PREVENTIVE OFFICER,
   EXCISE DIVISION OFFICE, KASARAGOD,
   P.O.VIDYA NAGAR, KASARAGOD DISTRICT.

2. K.T. ROY, PREVENTIVE OFFICER,
   EXCISE DIVISION OFFICE, KASARGOD,
   P.O.VIDYA NAGAR, COLLECTORATE,
   KASARGOD DISTRICT.

3. T. RAGHAVAN, EXCISE GUARD,
   EXCISE ENFORCEMENT & ANTI NARCOTIC SPECIAL
   SQUAD, KOVVALPALLI, KASARGOD AT KANHANGAD,
   P.O.KANHANGAD SOUTH, KASARGOD DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT, DEPARTMENT OF
   EXCISE, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE JOINT EXCISE COMMISSIONER
   COMMISSIONERATE OF EXCISE
   THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER
   KASARGOD.

4. THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF REVENUE, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVT. PLEADER MR. BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 2669 OF 2007

Dated this the 23rd January, 2007

JUDGMENT

The petitioners 1 and 2 are working as Preventive Officers in the Excise Division office, Kasaragode. The third petitioner is working as Excise Guard in the Excise Enforcement and Anti Narcotic Special Squad, Kahangad.

2. The petitioners 1 and 2 were the petitioners in O.P.27259/2000. The third petitioner was the petitioner in O.P.27253/2001. They challenge the decision taken by the Joint Excise Commissioner to the extent he has found that the orders granting higher grade to them are liable to be reviewed. Direction has been issued to recover the excess amount. A learned Judge of this Court upheld the above orders and dismissed the above mentioned original petitions. The petitioners filed W.A. No: 1530/2006 and 1510/2006. The Division Bench upheld the judgment of the learned single Judge and dismissed the writ appeals. It is seen from the judgment in the writ appeals that the Division Bench had considered not only the question relating to the legality of the order recalling the grant of higher grade but also the direction to recover the excess amount from the future emoluments of the petitioners. The contentions raised by the petitioners

were repelled and the Division Bench held that in the absence of a statutory bar preventing the recovery, no reliefs can be granted to the petitioners.

3. Thereafter the petitioners have resorted to a curious remedy. They filed representations evidenced by Exts.P6 and P8 before the Government praying that the recovery may not be effected and immediately thereafter filed this writ petition for a direction to the first respondent to consider and pass orders on Exts.P6 to P8.

4. I think, it will be improper on the part of the Government to consider the representations and to grant reliefs to the petitioners notwithstanding the findings entered by the Division Bench on the very same question. This Court cannot entertain writ petitions of this nature seeking for directions to the Government to nullify the judgment of a competent Court of law. Government have absolutely no jurisdiction to take any decision contrary to the findings of the Division Bench. The writ petition is totally misconceived and is dismissed in limine.

K.K.DENESAN
Judge

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